

January 30, 2017

Mathias H. Duda, President  
Ox Bow Marina, Inc.  
156 Pisgah Road, Huntington Massachusetts 01050

Mathias H. Duda, Registered Agent  
Ox Bow Marina, Inc.  
180 Island Road  
Northhampton, Massachusetts 01060

**VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

RE: Notice of Violations and Intent to File Suit under the Clean Water Act

To Whom It May Concern:

The Conservation Law Foundation (“CLF”)<sup>1</sup> hereby gives notice to the addressed persons of its intent to file suit pursuant to Section 505 of the Federal Water Pollution Control Act (“Clean Water Act,” “CWA,” or “Act”), 33 U.S.C. § 1365(a), for violations of the Act specified below. This letter constitutes notice pursuant to 40 C.F.R., Part 135 (the “Notice”), to the addressed persons of CLF’s intention to file suit in United States District Court of the District of Massachusetts, seeking appropriate equitable relief, civil penalties, and other relief no earlier than 60 days from the postmark date of this Notice letter.

The subject of this action is threefold. First, Ox Bow Marina, Inc. (hereinafter “Ox Bow Marina”) is discharging stormwater directly associated with boat storage, repair, and transportation (SIC code 4493) and boat building and repair (SIC code 3732) at the business located at 180 Island Road, Northampton Massachusetts 01060 (the “Facility”), to the waters of the United States without a permit, in violation of 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B). Second, Ox Bow Marina has failed to obtain coverage under any Clean Water Act permit including the Multi-Sector General Permit<sup>2</sup> (“MSGP”) adopted by the United States Environmental Protection

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<sup>1</sup> CLF is a not-for-profit 501(C)(3) organization dedicated to the conservation and protection of New England’s environment. Its mission includes the conservation and protection of the many uses of the waters in and around the Middle Connecticut watershed for, among other things, fishing, recreation, boating, scenic/aesthetic, and scientific purposes. CLF’s membership includes people who live in or near the Middle Connecticut watershed, and use and enjoy the watershed for recreational, aesthetic, and/or scientific purposes. The interests of CLF members are adversely affected by the Facility’s discharges of stormwater pollution to the receiving waters without a permit and in violation of the Clean Water Act.

<sup>2</sup> ENVIRONMENTAL PROTECTION AGENCY, MULTI-SECTOR GENERAL PERMIT FOR STORMWATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY (MSGP)

Agency (“EPA”) for industrial sources of polluted stormwater runoff, and failed to comply with the specific requirements of any such permit, in violation of Sections 402(p)(3)(A) and 402(p)(4)(A) of the CWA, 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A), and 40 C.F.R. §§ 122.26(c)(1) and (e)(1). In addition, Ox Bow Marina has failed to obtain individual National Pollutant Discharge Elimination System (“NPDES”) permit coverage for the Facility’s process water discharges that may result from activities such as hull pressure washing, flushing boat engines, and cleaning fuel filters.

## **BACKGROUND**

Stormwater discharges flow from the Facility onto sloped surfaces, drainage paths, ramps, and ditches and thence into discharges into a waterbody labeled by the EPA as Oxbow (Segment MA34066). Oxbow (Waterbody MA34066) is a waterbody within the Middle Connecticut watershed. Ox Bow Marina Oxbow flows into the Manhan River (Segment MA34-11), which outlets into the Connecticut River (Segment MA34-04). Downstream segments of the Connecticut River eventually flow into Long Island Sound and the Atlantic Ocean. EPA has designated Oxbow (Segment MA34066) and the Manhan River (Segment MA34-11) as habitats for “fish, shellfish, and wildlife protection and propagation,” recreation and aesthetic value.<sup>3</sup> EPA has designated the Connecticut River (Segment MA34-04) as a habitat for “fish, shellfish, and wildlife protection and propagation,” “aquatic life harvesting,” recreation, and aesthetic value.<sup>4</sup> The use of these waterways for other purposes is unassessed at this time.

EPA designated Oxbow (Waterbody MA34066) as impaired pursuant to Section 303(d) of the Act, 33 U.S.C. § 1313(d), for failure to meet minimum water quality standards.<sup>5</sup> Waterbody Segment MA34066 is non-native aquatic plants (nuisance exotic species) and turbidity. Stormwater is a probable source of impairments in Segment MA34066.<sup>6</sup>

EPA designated the Manhan River (Segment MA34-11) as impaired pursuant to Section 303(d) of the Act, 33 U.S.C. § 1313(d), for failure to meet minimum water quality standards.<sup>7</sup> Segment

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(June 5, 2015), [https://www.epa.gov/sites/production/files/2015-10/documents/msgp2015\\_finalpermit.pdf](https://www.epa.gov/sites/production/files/2015-10/documents/msgp2015_finalpermit.pdf) [hereinafter MSGP].

<sup>3</sup> See U.S. ENVTL. PROTECTION AGENCY, 2014 WATERBODY REPORT FOR OXBOW (MA34066) (2014), [https://ofmpub.epa.gov/waters10/attains\\_waterbody.control?p\\_au\\_id=MA34066&p\\_list\\_id=MA34066&p\\_cycle=2014](https://ofmpub.epa.gov/waters10/attains_waterbody.control?p_au_id=MA34066&p_list_id=MA34066&p_cycle=2014); U.S. ENVTL. PROTECTION AGENCY, 2014 WATERBODY REPORT FOR THE MANHAN RIVER (MA34-11) (2014), [https://ofmpub.epa.gov/waters10/attains\\_waterbody.control?p\\_au\\_id=MA34-11&p\\_list\\_id=MA34-11&p\\_cycle=2014](https://ofmpub.epa.gov/waters10/attains_waterbody.control?p_au_id=MA34-11&p_list_id=MA34-11&p_cycle=2014).

<sup>4</sup> See U.S. ENVTL. PROTECTION AGENCY, 2014 WATERBODY REPORT FOR THE CONNECTICUT RIVER (MA34-04) (2014), [https://ofmpub.epa.gov/waters10/attains\\_waterbody.control?p\\_au\\_id=MA34-11&p\\_list\\_id=MA34-11&p\\_cycle=2014](https://ofmpub.epa.gov/waters10/attains_waterbody.control?p_au_id=MA34-11&p_list_id=MA34-11&p_cycle=2014).

<sup>5</sup> See 33 U.S.C. § 1313(d).

<sup>6</sup> See U.S. ENVTL. PROTECTION AGENCY, *supra* note 3.

<sup>7</sup> See 33 U.S.C. § 1313(d).

MA34-11 is impaired for pathogens (*Escherichia coli*, or *E. coli*). Stormwater is a probable source of impairments in Segment MA34-11.<sup>8</sup>

EPA has designated the Connecticut River (Segment MA34-04) as impaired pursuant to Section 303(d) of the Act, 33 U.S.C. § 1313(d), for failure to meet minimum water quality standards.<sup>9</sup> Segment MA34-04 is impaired for pathogens (*Escherichia coli*, or *E. coli*) and polychlorinated biphenyls (PCBs) in fish tissue. Stormwater is a probable source of impairments in Segment MA34-04.<sup>10</sup>

Stormwater is water from precipitation events that flows across the ground and pavement after rain events or after snow and ice melt.<sup>11</sup> Industrial activities, such as material handling and storage, vessel refinishing and painting, vessel and equipment fluid changes, equipment maintenance and cleaning, boat and vehicle exterior washing, industrial processing, mechanical repairs, fueling, engine flushing, or other operations that occur at industrial facilities, may be exposed to stormwater flow.<sup>12</sup> Stormwater from industrial facilities, contaminated with pollutants, is then conveyed into nearby waterbodies.<sup>13</sup>

In order to discharge lawfully, Ox Bow Marina is required to apply for coverage under a Clean Water Act discharge permit, such as the MSGP. Since at least 2010, Ox Bow Marina has been specifically required to apply for coverage under the MSGP by filing a Notice of Intent (“NOI”) within 90 days after the initial issuance of the MSGP.<sup>14</sup> On June 16, 2015, after expiration of the prior permit, the EPA issued a new MSGP requiring all covered facilities to file an NOI for coverage under the 2015 permit.

Ox Bow Marina has failed to obtain coverage under the MSGP or any other valid authorization. Therefore, Ox Bow Marina is operating in violation of the Clean Water Act.

### **PERSONS RESPONSIBLE FOR ALLEGED VIOLATIONS**

Ox Bow Marina, Inc. and the Facility owner(s) are the persons, as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5), responsible for the violations alleged in this Notice. Ox Bow

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<sup>8</sup> See U.S. ENVTL. PROTECTION AGENCY, *supra* note 4.

<sup>9</sup> See 33 U.S.C. § 1313(d).

<sup>10</sup> See U.S. ENVTL. PROTECTION AGENCY, *supra* note 5.

<sup>11</sup> See 40 C.F.R. § 122.26(b)(13).

<sup>12</sup> See 40 C.F.R. § 122.26(b)(14).

<sup>13</sup> See 58 Fed. Reg. 61,146, 61,154 (November 19, 1993).

<sup>14</sup> EPA’s Final National Pollutant Discharge Elimination System Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP) was first issued in 1995 and later reissued in 2000, 2008, and 2015. See generally 60 Fed. Reg. 50,804 (Sept. 29, 1995); 65 Fed. Reg. 64,746 (Oct. 30, 2000); 73 Fed. Reg. 56,572 (Sept. 29, 2008); 80 Fed. Reg. 34,403 (June 16, 2015); *see also* MSGP, *supra* note 2, at pts. 1.1–1.2.

Marina, Inc. has operated the Facility since at least 1966 and currently advertises as the operator of the Facility, and is registered with the Secretary of the Commonwealth of Massachusetts as operator of the facility.<sup>15</sup> Ox Bow Marina, Inc. and its agents and directors—including but not limited to Mathias H. Duda, President—have operational control over the day-to-day industrial activities at these Facility. Therefore, the Facility owner(s) and operator(s) are responsible for managing stormwater at the Facility in compliance with the Clean Water Act.

### **LOCATION OF THE ALLEGED VIOLATION**

The violations alleged in this Notice have occurred and continue to occur at the marina and boat maintenance Facility located at 180 Island Road, Northampton Massachusetts 01060.

### **ACTIVITIES ALLEGED TO BE VIOLATIONS**

Ox Bow Marina has engaged, and continues to engage in “industrial activities” and its operations fall under SIC codes 4493 and 3732, within the meaning of 40 C.F.R. §§ 122.26(b)(14).<sup>16</sup> Because the Facility has primary SIC codes of 4493 and 3732 and discharges stormwater associated with industrial activity, Ox Bow Marina is required to apply for, obtain coverage under, and comply with the requirements of a NPDES permit such as the MSGP.

Activities at the Facility include, but are not limited to: boat transportation, storage, winterization and maintenance; fueling; flushing boats engines and draining blocks or manifolds; hull pressure washing, repairing engines; cleaning and changing oil filters and fuel filters; handling, transferring, storing and disposing of materials; and shipboard processes resulting in improper discharges to storm sewers or into receiving water. Machinery and other equipment is operated and stored outdoors, therefore being exposed to and corroded by the elements. Vehicles driving on and off the Facility site track pollutants off-site. All of these activities at the Facility have contaminated the site with industrial pollutants.

Industrial equipment, materials and vehicles at the Facility are exposed to precipitation and snowmelt. Precipitation falls on and flows over the Facility, picking up paint solids, metals, heavy metals, total suspended solids (TSS), total dissolved solids (TDS), diesel/gas fuel, ethylene glycol (anti-freeze), acid and alkaline wastes, solvents, oil, low density waste (floatables), trash, and other pollutants associated with the Facility’s operations. The polluted runoff is then conveyed off-site into waters of the United States via man-made collection systems, sloped

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<sup>15</sup> See SEC’Y OF THE COMMONWEALTH OF MASS.: CORPS. DIV. BUS. ENTITY SUMMARY: OX BOW MARINA, INC., <http://corp.sec.state.ma.us/CorpWeb/CorpSearch/CorpSummary.aspx?FEIN=042392949> (last visited January 30, 2017).

<sup>16</sup> See MSGP, *supra* note 2, at app. D–Q and R. Water transportation (SIC 4493) and boat and ship building and repair (SIC 3732) facilities are subject to the requirements of the MSGP for stormwater discharges.

surfaces and site grading, shallow subsurface hydrological connections, and through the operation of gravity.

In addition, to the extent that Ox Bow Marina uses water in its industrial processes, including but not limited to activities such as hull pressure washing, flushing boat engines and cleaning fuel filters, that water becomes “process wastewater” (also referred to as “process water”) as defined in 40 C.F.R. § 122.2.<sup>17</sup> Discharges of process wastewater are not covered under the Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity. Instead, discharges of process wastewater shall be covered under an individual NPDES permit. CLF intends to pursue claims related to Ox Bow Marina’s unpermitted discharges of process water to waters of the United States.

### **STANDARDS AND LIMITATIONS ALLEGED TO HAVE BEEN VIOLATED**

The Clean Water Act prohibits the discharge of pollutants to the waters of the United States except in accordance with a valid NPDES permit.<sup>18</sup> Ox Bow Marina discharges stormwater associated with its industrial activity, as defined by 40 C.F.R. § 122.26(b)(14), from its Facility into waters of the United States. Because Ox Bow Marina has not obtained coverage for these stormwater discharges under the MSGP or an individual NPDES permit, it is illegally discharging stormwater without a permit, in violation of Sections 301(a) and 402(p)(2)(B) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B).<sup>19</sup> By failing to apply for and comply with the specific requirements of the MSGP, Ox Bow Marina is in violation of Sections 402(p)(3)(A) and 402(p)(4)(A) of the CWA, 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A), and 40 C.F.R. §§ 122.26(c)(1) and (e)(1). In addition, unpermitted discharges of process wastewater constitute violations of 33 U.S.C. § 1311(a). As a result, CLF gives Ox Bow Marina notice that CLF intends to pursue claims related to Ox Bow Marina’s unpermitted discharges of process wastewater to waters of the United States.

#### **a. Ox Bow Marina is discharging stormwater to waters of the United States without a permit.**

Ox Bow Marina is an industrial discharger with primary SIC codes of 4493 and 3732, which means that pursuant to Section 402(p) of the Act, Ox Bow Marina is obligated to apply for coverage under the MSGP or to obtain other legal authorization. Because Ox Bow Marina has

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<sup>17</sup> Defining “Process wastewater” as “any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.”

<sup>18</sup> 33 U.S.C. § 1311(a).

<sup>19</sup> See 33 U.S.C. § 1362(12); 40 C.F.R. § 122.2; see also MSGP, *supra* note 2, at app. A (defining the term “discharge of a pollutant” as, *inter alia*, “any addition of any ‘pollutant’ or combination of pollutants to ‘waters of the United States’ from any ‘point source’”).

operated and continues to operate without a permit under Section 402(p), Ox Bow Marina is in violation of Section 301(a) of the Act.

In addition, during storm events, Ox Bow Marina's "industrial activities" at its Facility have resulted in a "discharge of pollutants" within the meaning of 33 U.S.C. § 1362(12) and "stormwater discharge associated with industrial activity" within the meaning of 40 C.F.R. § 122.26(b)(14), from its Facility on each and every day that there has been a measurable precipitation event of above 0.1 inches.<sup>20</sup> There have been many such storm events since 1979. The Facility is generating pollutants from and through at least the following point sources: ramp systems, equipment, catch basins and drains, machines and equipment left outdoors, site grading and sloped surfaces, vehicles driving on and off the Facility, and other conveyances to Oxbow.<sup>21</sup> Oxbow is a "water of the United States," as defined in 40 C.F.R. § 122.2, and therefore are also a "navigable water," as defined in 33 U.S.C. § 1362(7). The Facility is discharging this industrial stormwater without the permit required under Section 402 of the Act, 33 U.S.C. § 1342.

**b. Ox Bow Marina is discharging process wastewater to waters of the United States without a permit.**

Boat washwater is classified as "process wastewater" under the federal Clean Water Act and as defined in 40 C.F.R. § 122.2.<sup>22</sup> Wastewater associated with industrial processes, including, but not limited to, flushing engines, washing boats, and cleaning fuel filters, is classified as "process wastewater" under the federal Clean Water Act and as defined in 40 C.F.R. § 122.2. Washwater produced by marina activities can contain a variety of pollutants. Ablative bottom paints, which are designed to slowly slough away from the boat hull, are particularly prone to contaminating washwater with toxic metals such as zinc, copper, and occasionally lead. In addition, solids suspended in washwater, such as paint chips and organic material, can pollute ground and surface water. Process wastewater can be toxic to marine life and can have severe and long-term impacts on aquatic environments. In addition, improperly managed pressure washing or engine flushing operations can result in unsightly plumes that discolor natural waterways and stain natural features with bottom paint and oils.

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<sup>20</sup> See 40 C.F.R. § 122.26(c)(i)(E)(6). EPA has determined that precipitation greater than 0.1 inches in a 24-hour period constitutes a measurable precipitation event for the purposes of evaluating stormwater runoff associated with industrial activity.

<sup>21</sup> These discharges constitute "point sources" as defined by 33 U.S.C. § 1362(14) and 40 C.F.R. § 122.2. Specifically, CLF puts Ox Bow Marina on notice that the unpermitted stormwater discharges associated with industrial activity include discharges from the Facility areas specified in 40 C.F.R. § 122.26(b)(14). See also 40 C.F.R. § 122.2 (stating that the definition of "discharge of a pollutant" "includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man[.]").



Discharges of process wastewater that result from flushing engines and cleaning boat hulls and equipment are not covered under the MSGP. Discharges of process wastewater must instead be covered under an individual NPDES permit. Ox Bow Marina does not have an individual NPDES permit authorizing the discharge of pressure washwater to waters of the United States. Therefore, CLF intends to pursue claims related to Ox Bow Marina's unpermitted discharges of process water to waters of the United States, namely Oxbow.

**c. Ox Bow Marina is violating the Clean Water Act by failing to obtain coverage and failing to comply with the requirements of the MSGP.**

Ox Bow Marina is violating 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A), and 40 C.F.R. §§ 122.26(c)(1) and (e)(1), by failing to apply for, obtain coverage, and comply with the requirements of the MSGP.<sup>23</sup> The Facility has primary SIC codes of 4493 and 3732 and must obtain coverage under the MSGP for its stormwater discharges and for stormwater discharges from any co-located industrial activities.<sup>24</sup> Ox Bow Marina's failure to obtain coverage and comply with the permit is in violation of the MSGP and Section 402, 33 U.S.C. § 1342(p) of the Clean Water Act.<sup>25</sup>

**1) Ox Bow Marina Must Develop and Implement a Stormwater Pollution Prevention Plan (SWPPP).**

As a prerequisite to applying for coverage under the MSGP, Ox Bow Marina must develop and implement a Stormwater Pollution Prevention Plan ("SWPPP") for its Facility.<sup>26</sup> The SWPPP must include, but is not limited to, the following: information related to a company stormwater pollution prevention team, a site description, a summary of pollutant sources, a description of control measures, and schedules and procedures pertaining to control measures and monitoring.<sup>27</sup> Ox Bow Marina has failed to develop and implement a SWPPP in accordance with the MSGP requirements in violation of the MSGP and Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

**2) Ox Bow Marina Must Submit to EPA a Complete Notice of Intent to be Covered under the MSGP.**

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<sup>23</sup> See MSGP, *supra* note 2, at pts. 1.1–1.2.

<sup>24</sup> *Id.* at pts. 1.1, 8.Q and 8.R.

<sup>25</sup> A thorough search of EPA's databases indicates that Ox Bow Marina has not filed an NOI for the Facility for the 2015 MSGP. See U.S. ENVTL. PROTECTION AGENCY, ENFORCEMENT AND COMPLIANCE HISTORY ONLINE, <https://echo.epa.gov/> (last visited January 30, 2017).

<sup>26</sup> See MSGP, *supra* note 2, at pt. 5.

<sup>27</sup> *Id.* at pt. 5.2.

To be eligible to discharge under the MSGP, Ox Bow Marina must submit a complete Notice of Intent (“NOI”) to the EPA.<sup>28</sup> To complete the NOIs, Ox Bow Marina is required to determine whether the body of water to which the stormwater discharges is an “impaired” waterbody, and whether the Facility discharges any specific pollutants listed on the NOI to this waterbody.<sup>29</sup> Oxbow is classified as an “impaired” waterway.<sup>30</sup> Additionally, as part of preparing the NOIs, the covered Facility must make certain verifications such as ensuring that no harm is done to a species in violation of the Endangered Species Act.<sup>31</sup> Ox Bow Marina has failed to prepare and file an NOI meeting all applicable requirements in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

### **3) Ox Bow Marina Must Take Control Measures and Meet Water-Quality Effluent Limitations.**

To be eligible to discharge under the MSGP, Ox Bow Marina must select, design, install, and implement control measures (including best management practices) to prevent polluted stormwater discharges from reaching nearby waterbodies. Ox Bow Marina must address the selection and design considerations in the permit, meet the non-numeric effluent limitations in the permit, and meet limits contained in applicable permit effluent limitations guidelines.<sup>32</sup> These control practices must be in accordance with good engineering practices and manufacturer’s specifications.<sup>33</sup> If the control measures are not achieving their intended effect of minimizing pollutant discharges, the permittee must modify these control measures as expeditiously as practicable.<sup>34</sup> Ox Bow Marina has failed to cover the materials and operations that may result in polluted stormwater runoff. Ox Bow Marina has not implemented the required control measures in violation of the MSGP and Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

### **4) Ox Bow Marina Must Conduct Routine Facility Inspections.**

To be eligible to discharge under the MSGP, Ox Bow Marina must conduct routine inspections of all areas of the Facility where industrial materials or activities are exposed to precipitation, and must ensure that all stormwater control measures comply with the effluent limits contained in the MSGP.<sup>35</sup> Routine inspections must be conducted at least quarterly, but in many instances, monthly inspections are most appropriate.<sup>36</sup> These inspections must occur when the Facility is in

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<sup>28</sup> *Id.* at pt. 1.2.

<sup>29</sup> *Id.* at pt. 2.2.2.

<sup>30</sup> *See* U.S. ENVTL. PROTECTION AGENCY, *supra* notes 3 and 4.

<sup>31</sup> *See* MSGP, *supra* note 2, at pts. 1.1.4.5, 2.3.

<sup>32</sup> *Id.* at pt. 2.1.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at pt. 3.1.

<sup>36</sup> *Id.*



operation.<sup>37</sup> The schedule of these inspections must be included in the Facility's SWPPP and be performed by qualified personnel.<sup>38</sup> Ox Bow Marina has failed to conduct the required routine inspections in accordance with the MSGP requirements in violation of the MSGP and Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

#### **5) Ox Bow Marina Must Comply with the Required Monitoring and Sampling Procedures.**

To be eligible to discharge under the MSGP, Ox Bow Marina must conduct routine inspections of all areas of the Facility where industrial materials or activities are exposed to precipitation, and must ensure that all stormwater control measures comply with the effluent limits contained in the MSGP.<sup>39</sup> The MSGP requires five types of analytical monitoring—one or more of which may apply—including quarterly benchmark monitoring, annual effluent limitations guidelines monitoring, State or Tribal-specific monitoring, impaired waters monitoring, and other monitoring as required by the EPA.<sup>40</sup> An operator must monitor each outfall identified in the SWPPP covered by a numeric effluent limit.<sup>41</sup> Required monitoring must be performed after stormwater events that result in an actual discharge on a required schedule.<sup>42</sup> All monitoring data collected under the Permit must be reported to EPA. Furthermore, because Oxbow is an “impaired water” under Section 303(d) of the Clean Water Act, 33 U.S.C. § 1313(d), Ox Bow Marina must monitor for all pollutants for which Oxbow is impaired.<sup>43</sup> Ox Bow Marina has failed to conduct the required monitoring under the MSGP and has failed to submit the required monitoring reports to EPA in violation of the MSGP and the Clean Water Act, 33 U.S.C. § 1342(p).

#### **6) Ox Bow Marina Must Carry Out the Required Reporting and Recordkeeping.**

Ox Bow Marina must maintain and submit any and all required monitoring data.<sup>44</sup> Such monitoring data includes the following: an annual report to EPA which includes the Facility's findings from the annual comprehensive site inspection and any documentation of corrective actions;<sup>45</sup> an Exceedance Report to the EPA if any of the follow-up monitoring shows any

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<sup>37</sup> *Id.* at pt. 3.1.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at pt. 6.2.

<sup>41</sup> *Id.* at pt. 6.1.1.

<sup>42</sup> *Id.* at pt. 6.1.3.

<sup>43</sup> *Id.* at pt. 6.2.4

<sup>44</sup> *Id.* at pt. 7.

<sup>45</sup> *Id.* at pt. 7.5.

exceedances of a numeric effluent limit;<sup>46</sup> and any other required reports under the MSGP.<sup>47</sup> Ox Bow Marina has failed to maintain the required records and failed to submit all required monitoring data under the MSGP in violation of the MSGP and Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

### **7) Ox Bow Marina Must Comply with the Requirements of MSGP Parts Q and R**

Ox Bow Marina must also comply with the sector-specific requirements contained in Subparts Q and R of the MSGP.<sup>48</sup> Subparts Q and R require water transportation and boat building and repair facilities to implement additional technology-based effluent limits,<sup>49</sup> meet additional SWPPP and inspection requirements,<sup>50</sup> and monitor stormwater discharges for compliance with the benchmark limitations applicable specifically to water transportation facilities.<sup>51</sup> Ox Bow Marina has failed to comply with the requirements of Subparts Q and R of the MSGP in violation of the MSGP and Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

### **DATES OF VIOLATION**

Each day on which Ox Bow Marina, Inc. operates its Facility without permit coverage or discharges stormwater and/or process water without a permit from the Facility is a separate and distinct violation of Sections 301(a) and 402(p)(2)(B) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B).

Ox Bow Marina has discharged stormwater without a permit in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), on every day since at least 2010 on which there has been a measurable precipitation event. Each day on which Ox Bow Marina, Inc. operates its Facility without permit coverage or discharges process water without a permit from the Facility is a separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C. §§ 1311(a).

Every day, since at least 2010, on which Ox Bow Marina has failed and continues to fail to apply for, obtain coverage, and comply with the requirements of the MSGP is a violation of Section 402(p)(3)(A) and (p)(4)(A) of the CWA, 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A).

These violations are ongoing and continuous, and barring a change in the stormwater management controls at the Facility and full compliance with the permitting requirements of the Clean Water Act, these violations will continue indefinitely.

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<sup>46</sup> *Id.* at pt. 7.6.

<sup>47</sup> *Id.* at pt. 7.7.

<sup>48</sup> *Id.* at app. D, Table D-1, Sectors Q and R.

<sup>49</sup> *Id.* at pts. 8.Q.3; 8.R.3.

<sup>50</sup> *Id.* at 8.Q. 4; 8.Q.5; 8.R.4; 8.R.5

<sup>51</sup> *Id.* at 8.Q.6.

These violations are ongoing and continuous, and barring a change in the stormwater management controls at the Facility and full compliance with the permitting requirements of the Clean Water Act, these violations will continue indefinitely.

### **RELIEF REQUESTED**

Ox Bow Marina, Inc. and the Facility owner(s) and operator(s) are liable for the above-described violations occurring prior to the date of this letter, and for every day that these violations continue. Each separate violation of the Act subjects Ox Bow Marina to civil penalties of up to \$37,500 per day per violation for all violations occurring from January 12, 2009 through November 2, 2015, and up to \$51,570 for violations that occurred after November 2, 2015.<sup>52</sup> CLF will seek the full penalties allowed by law.

In addition to civil penalties, CLF will seek declaratory relief and injunctive relief to prevent further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), and such other relief as permitted by law. CLF will seek an order from the Court requiring Ox Bow Marina to correct all identified violations through direct implementation of control measures and demonstration of full regulatory compliance.

Lastly, pursuant to Section 505(d) of the Act, 33 U.S.C. § 1365(d), CLF will seek recovery of costs and fees associated with this matter.

### **CONCLUSION**

During the 60-day notice period, CLF is willing to discuss effective remedies for the violations noted in this letter that may avoid the necessity of further litigation. If you wish to pursue such discussions, please have your attorney contact Zachary Griefen within the next 20 days so that negotiations may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing at the conclusion of the 60 days.

Sincerely,

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<sup>52</sup> See 33 U.S.C. §§ 1319(d), 1365(a); 40 C.F.R. §§ 19.1–19.4.



A handwritten signature in blue ink, appearing to read "Zachary K. Griefen", is positioned above the contact information.

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